

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

FROM: C. Scott Tocher, Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: September 25, 2001

SUBJECT: Implementation of Proposition 34; Permanent Adoption of Emergency Regulations 18421.4 - Reporting Cumulative Amounts; and 18542 - Notification of Personal Contributions In Excess of the Voluntary Expenditure Limits

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This memorandum presents two regulations for adoption in the implementation of Proposition 34 as it affects campaign disclosure. New provisions added to the Political Reform Act by Proposition 34 impose mandatory limits on contributions received by candidates for elective state office and by committees that make contributions to candidates for elective state office. State candidates also are subject to voluntary expenditure limits. At its June meeting, the Commission adopted Emergency Regulations 18421.4 and 18542, and made associated changes to campaign disclosure forms to implement the new provisions in the law. These two regulations are set to expire by operation of law, and commission staff proposes the Commission adopt the regulations permanently and without amendment.

I. PROPOSED REGULATION 18421.4 - REPORTING CUMULATIVE AMOUNTS

At the May and June Commission meetings, the Commission authorized revisions to campaign disclosure forms to require reporting of information related to Proposition 34:

- ◆ Candidates for elective state office will be required to disclose the cumulative amount of contributions received, per election, from each contributor itemized on the candidate's campaign statement.¹
- ◆ Candidates for elective state office who have accepted the voluntary expenditure limit for a particular election will be required to disclose at the end of each reporting period the total amount of expenditures that count toward the voluntary expenditure limit for that election.

¹ The new reporting requirements will not affect contributions to or expenditures made by candidates for statewide elective office until November 6, 2002.

- ◆ Recipient committees that make contributions to candidates for elective state office will disclose the cumulative amount of contributions made, per election, to each candidate.

Proposed Regulation 18421.4 (Attachment A) implements the new disclosure requirements. Section 84211 specifies the content of campaign disclosure reports filed by candidates and committees. The regulation provides that, in addition to the calendar year cumulative amounts required to be disclosed under Section 84211, cumulative amounts per election must be disclosed for contributions made to or received by candidates for elective state office, as described above.

Subsection (b) of the proposed regulation sets out the disclosure, per election, of **total** expenditures by a state candidate who has accepted the voluntary expenditure limit. (This is the new Line 22 on the Form 460 Summary Page.) This disclosure is mandatory. The primary purpose for adding Proposition 34-related disclosure to the forms is to provide the public with some means of monitoring the contribution and expenditure limits. In addition, the disclosure may prevent the filing of erroneous enforcement complaints.²

Staff recommends adoption of Regulation 18421.4.

II. PROPOSED REGULATION 18542—NOTIFICATION OF PERSONAL CONTRIBUTIONS IN EXCESS OF THE VOLUNTARY EXPENDITURE LIMITS

Section 85402(a) provides that a candidate who has accepted the expenditure limit is no longer bound by it if an opposing candidate contributes personal funds to his or her campaign in excess of the limit. Section 85402(b) requires the Commission to establish a procedure for notification by candidates who make personal contributions in excess of the limit.

Regulation 18542 (Attachment B) implements Section 85402(b). The regulation requires the candidate to file an amended Form 501 - Candidate Intention with the Secretary of State by guaranteed overnight or personal delivery. The regulation requires the amendment to be filed within 24 hours of making contributions in excess of the limit, which is consistent with the late contribution and late independent expenditure reporting provisions of the Act.

Staff recommends adoption of Regulation 18542.

² One interested person has suggested the Commission, in connection with Regulation 18421.4, consider enacting a regulation to return or refuse an unsolicited "in-kind" contribution. It is suggested a candidate could be forced "to exceed voluntary spending limits against his or her own will, if a third party made an in-kind contribution of sufficient value, without the candidate's consent." Regulation 18421.4 addresses narrower issues concerning reporting requirements and it would not be appropriate to expand the regulation further.